IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1221 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RABARI KARSANBHAI RAJABHAI

Versus

D DANIAL GAJRAJ @ PRITHAVI

Appearance:

1. First Appeal No. 1221 of 1981

MS SNEHA A JOSHI for appellant.

NOTICE SERVED for Respondent No. 1-3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/09/2002

ORAL JUDGEMENT

The present First Appeal is filed by the appellant-- original claimant being aggrieved of the judgement and award passed by the Motor Accident Claims

Tribunal, Sabarkantha at Himatnagar (hereinafter referred to as "the Tribunal) in Motor Accident Claim Case No.162 of 1979 dated 26.9.1980.

2. The facts of the case are that the wife of the claimant, Bai Jivi, aged about 29 years, died on 2.7.1979 at about 16.45 hours on account of injuries sustained by her in a motor vehicle accident.

3. The claimant had initially claimed an amount of Rs.30,000/-, as compensation. Subsequently he reduced his claim to Rs.25,000/-, by making necessary amendment in his claim petition. He reduced the claim amount because he was not able to pay the court fee. Be that as it may. The fact remains that the claimant lost his wife aged 29 years on 2.7.1979, in a motor vehicle accident occurred on Himatnagar-- Modasa Highway, when one Toyoto Crown motor car bearing registration No.Ba A 4769 (UN) dashed against her. The claimant was very considerate in making a moderate claim. He contended that his wife was earning about Rs.250-- 300/-, per month out of the activity of collecting milk for 'Sabar Dairy' from various places in surrounding areas. It is also on record that the wife of the claimant was also doing some sewing work. He claimed Rs.7000/-, as compensation under the head of mental shock, pain and sufferings. He claimed Rs.14,000/-, towards economic loss and Rs.4000/-, as death ceremony expenses, totalling to Rs.25,000/-.

4. The Honourable Tribunal has considered the claim as discussed in para 13 of the judgement. It did not believe the case of the claimant that the deceased was earning Rs.300/-, per month, what is believed is that she was earning only Rs.150/-, per month. Out of which, she was spending Rs.50/-, for herself. Thus, only a sum of Rs.100/-, per month was the contribution to the family making the annual contribution of Rs.1200/-. Taking into consideration the age of the deceased, i.e. 29 years, the multiplier 10 was applied and a sum of Rs.12,000/-, was awarded towards, 'economic loss'. The learned Judge was pleased to grant Rs.6000/-, for 'loss of company of wife' resulting into loss of services rendered to the claimant by the deceased and awarded Rs.2000/-, for performing funeral ceremony, totalling to Rs.20,000/-, in all.

5. The present First Appeal is restricted to an additional sum of Rs.5,000/-, only. The learned advocate Ms.Sneha Joshi contended that the Honourable Tribunal has erred in applying the multiplier of 10 for awarding the amount under the head of economic loss. She submitted

that looking to the age of the deceased i.e. 29 years and looking to the expectancy of life, multiplier applied should not have been less than 15. She also contended that the learned Judge has erred in not awarding any amount under the head-pain, shock and suffering, and has also erred in awarding only Rs.6,000/-, under the head-loss of company. She submitted that the Honourable Tribunal ought to have taken into consideration that the claimant belongs to Rabari community where after-death ceremony is very expensive, and taking judicial notice of the same he should have awarded Rs.4,000/-, towards after death ceremony.

6. Without going into minute working out of the amount claimed for, it appears that it would be just and proper if an additional sum of Rs.5,000/-, is awarded to the claimant for loss of life of a 29 year old, strong built, earning member of the family. Rs.25,000/-, cannot be said to be an exaggerated amount by any stretch of imagination.

7. The Insurance Company though served has not filed its appearance before the Court. However, with a view to give an additional opportunity to the Insurance Company, it is directed that in case the Insurance Company is aggrieved of this order, can approach this Court within a period of four weeks from the date of service of this order.

8. In the result this First Appeal is allowed. All the opponents to pay to the appellant a sum of Rs.5,000/-, (Rupees five thousand only) with interest at the rate of 9% per annum from the date of application till date of payment with proportionate cost. The liability of all the three opponents shall be joint and several. Direct service is permitted.

(Ravi R. Tripathi, J.)

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